

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING  
February 28, 2017

A public hearing of the Zoning Board of Adjustment was held on Tuesday, February 28, 2017 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

Jack Currier, Chair  
JP Boucher, Vice Chair  
Mariellen MacKay, Clerk  
Robert Shaw  
Kathy Vitale - arrived at 6:45

Carter Falk, AICP, Deputy Planning Manager/Zoning

Mr. Currier explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Currier explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Currier also explained procedures involving the timing light.

1. **Crimson Properties, LLC, (Owner) 699 West Hollis Street (Sheet F Lot 423) & Judith Walker & Deborah Howe (Owners) 701 West Hollis Street (Sheet F Lot 59) appealing the decision of the administrative officer that a proposed elderly housing development is not considered by staff to be an elderly housing development; and that more than one principal structure would be allowed on one lot. R9 Zone, Ward 5. [POSTPONED TO 3-28-17 MEETING]**
2. **Allen C. Mello Revocable Trust (Owner) 13 Marmon Drive (Sheet A Lot 690) requesting variance to exceed maximum number of wall signs, 3 permitted, 5 proposed. HB Zone, Ward 7. [TABLED FROM 2-14-17 MEETING]**

Voting on this case:

Jack Currier  
JP Boucher  
Mariellen MacKay  
Robert Shaw  
Kathy Vitale

Attorney Gerald Prunier, Prunier & Prolman P.A., 20 Trafalgar Square, Nashua, NH. Atty. Prunier said he is objecting to proceeding with only four members, but will proceed anyways.

Atty. Prunier passed out a photo of the front of the building to the Board. He said like the other dealers around this area, they need to comply with the corporate national standards for their signs. He said that the franchiser sets out a request for the type of signage that they want for their frontage. He said that they want four signs, and the other sign says Allen Mello. He said that the four signs are for Chrysler, Dodge, Jeep and Ram, the four product lines that they sell. He said that the Code allows a maximum of three wall signs.

Atty. Prunier said he's been before the Board for other dealerships on Marmon Drive to get the signs to conform to the franchisers require. He said that the proposed signs are not out of character with the area, as the whole area has automotive dealerships. He said the request isn't outside of the spirit and intent of the ordinance, and he said that they're not requesting additional sign area.

Mr. Shaw asked to clarify the square footage, the existing and proposed square footage.

Atty. Prunier said he isn't sure of the exact numbers, and showed the Board the old façade with the old signs they had.

Mr. Falk said that the square footage that they're proposing with the five signs meets the ordinance for sign area. He said that since the building and front façade was all taken down, they had to start all over with their signage, and they actually had more square footage before, so this request is smaller.

Mr. Shaw said it's helpful to know the exact numbers.

Mr. Falk said that the maximum allowed is 150 square feet, and believed that they meet all the numbers. He said that both he and Marcia looked at it.

Atty. Prunier said that the total square footage allowed is 150 square feet, and they're less than that.

Mr. Currier asked about the Service sign.

Atty. Prunier said that sign is set back pretty far from the front façade, and staff indicated that it is more of a directional sign.

Mr. Falk agreed.

Mr. Shaw asked how the signs would be lit.

Atty. Prunier said that they would have internal illumination.

**SPEAKING IN FAVOR:**

Allen Mello, 13 Marmon Drive, Nashua, NH. Mr. Mello agreed that the signs would be internally lit, and stated that they will be below the allowable square footage.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

Letter from Matthew Thebarger. Mr. Currier said that the Board has the letter, and Atty. Prunier has the letter, and thought it had to do more with some landscaping along the borders. He said that the letter states that the security cameras look at his property, which they don't.

Mr. Shaw said it looked as if the person wanted to say that he didn't want additional signage on the side of the building that may be facing Hobart, but it appears as if the proposed signs will not affect anyone's view from Hobart.

Atty. Prunier said that the signs face Graham Drive, straight down Graham Drive.

**MOTION** by Mr. Shaw to approve the variance application on behalf of the owner as advertised. Mr. Shaw said that the variance is needed to enable the applicant's use of the property, the key part of this is that as a car dealership, there are certain elements of the franchising guidelines for the signage that require multiple brands to be displayed and the site lends itself to those separate signs in that the total number of signs, the square footage still does not exceed the allowable square footage for the signage, so the overall impact from a visual perspective, or total signage, would appear to be minimal.

Mr. Shaw said that the proposed use would be within the spirit and intent of the ordinance.

Mr. Shaw said it will not adversely affect property values of surrounding parcels, as there was no testimony one way or another. He said that the request is not contrary to the public interest, and that substantial justice is served.

**SECONDED** by Ms. Vitale.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**3. John & Leilani Hall (Owners) 41 Sanborn Drive (Sheet E Lot 1206) requesting variance to exceed maximum fence height, 6 feet permitted, 8 feet requested, for a portion of a fence on the right rear side of the property. R9 Zone, Ward 1.**

Voting on this case:

Jack Currier  
JP Boucher  
Mariellen MacKay  
Kathy Vitale  
Rob Shaw

John Hall, 41 Sanborn Drive, Nashua, NH. Mr. Hall said that they're requesting a portion of a fence that would be 8 feet tall. He said that the reason is that they had a pool installed last fall, and the property slopes down, so with the decking, it raised it up over a foot to the right side of the property, so when people stand on that side of the decking, their heads are over the fence. He said it would be about  $\frac{3}{4}$ 's of the fence just on that side of the property.

Mr. Shaw asked if they've spoken with the neighbor at 39.

Mr. Hall said not yet, but they can.

**SPEAKING IN FAVOR:**

No one.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

Mr. Currier said that a letter was submitted by 40 Sanborn Drive. He said that it's a house across the street. He said that they had several questions, and it was determined that they thought it was a neighbor, and most of the questions, if not all of them, are not valid.

**MOTION** by Mr. Boucher to approve the variance application on behalf of the owner as advertised. Mr. Boucher said that the variance is needed to enable the applicant's use of the property, given the special conditions of the property, the Board talked about the location of the property, and it would be hard to see the impact from the street, the abutting property in the rear is a school, and the topography slopes down.

Mr. Boucher said that the proposed use would be within the spirit and intent of the ordinance.

Mr. Boucher said it will not adversely affect property values of surrounding parcels, as there was no testimony one way or another. He said that the request is not contrary to the public interest, and that substantial justice is served.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**4. Sara Davis-Pagan (Owner) 22 Cheshire Street (Sheet F Lot 934) requesting variance to encroach 16 feet into the 20 foot required front yard setback to maintain an existing 10'x20' car shelter. R9 Zone, Ward 1.**

Voting on this case:

Jack Currier  
JP Boucher  
Mariellen MacKay  
Rob Shaw  
Kathy Vitale

Sara Davis-Pagan, 22 Cheshire Street, Nashua, NH. Mrs. Davis-Pagan said that three years ago she purchased a car, and bought the car shelter to protect it from the environment. She said the neighborhood has been quiet about it, and someone called City Hall to complain about it. She said it's been up for three years, and no one has said anything. It was at that time, she

realized she needed to apply for a variance for it, as it encroaches into the front yard setback.

Mr. Currier said that there is a letter, somewhat in opposition.

Mr. Shaw asked if she could walk the Board through the placement, and why it can't be moved back.

Mrs. Davis-Pagan said that at the end of the driveway, there are rocks and the land starts gradually sloping upwards, and there really isn't a back yard.

Mr. Currier asked if the shelter could be moved back if the shed was moved up the hill a little bit, and the lawn items could still be placed in it.

Mrs. Davis-Pagan said that they had to dig into the incline just to put the shed there, which is why there are blocks there. She said it's also a dead end street, and there have never been any problems before.

**SPEAKING IN FAVOR:**

No one.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

Mr. Currier said that there is the letter of concern from the neighbor across the street.

Mrs. Davis-Pagan said that the shelter has been up for three years, and the neighbor hasn't said anything about it, they're selling their home. She didn't see how the shelter would devalue the cost of their home.

Ms. Vitale said she's looking at the way the home sits on the property, and even if the homeowner put on a single car garage addition, it still would encroach. She said she'd like to see it pushed further back so it wouldn't stick out so much.

Mr. Boucher said that the lot has some challenges to push it back. He said it's on a dead end street, and didn't find the structure to have any obstruction to anyone in the area. He said it's reasonable where it is.

Mrs. MacKay said that the house is tilted on an angle, and it would be more of a hardship to dig something out to place a shed a few feet back, and it'll still be within the encroachment. She said she's in support of this, and can't disagree with what they want to do.

Mr. Shaw said he's struggling with it. He said first of all, it is a temporary shelter, so it's not a permanent structure, so there's a question of what it's permanence is, and there might not have been an understanding of its placement relative to where it's allowed to be or not. He said the aesthetics of it is something not everybody would appreciate, but just because someone hasn't said anything for three years, it doesn't mean that they condone it or approve it, sometimes neighbors don't know how to approach other neighbors with a reasonable position to make. He said that there are other possible options for moving the shed and the shelter, and right now, per the Code it's not allowed.

Mr. Currier said he agrees with Mr. Shaw, he said that beauty is in the eye of the beholder, and it is pretty far out front. He said he appreciated the tone of the letter, it was trying to look at things optimistically, and feels that there could be less encroachment in this case if the other shed is moved. He said he's struggling to support the case.

**MOTION** by Mr. Boucher to grant the variance as advertised on behalf of the owner. He said that the variance is needed to enable the applicants proposed use of the property, given the special conditions of the property, the Board heard testimony from the applicant that there is a semi-permanent shed behind the current structure, the land rises up in topography, so there are some challenges of relocating the shed. He said that the Board finds that the area where this is located in is at a dead end area. He said that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible to pursue, other than the variance.

Mr. Boucher said that the request is within the spirit and intent of the ordinance, it will not affect the property values of surrounding parcels, there was one letter somewhat in opposition, describing what they see the street like a campground and other issues with other properties on the street, but there is no testimony one way or another with values of surrounding parcels.

Mr. Boucher said it is not contrary to the public interest, and substantial justice would be served.

**SECONDED** by Mrs. MacKay.

**MOTION FAILED**, no third affirmative vote (Mr. Currier, Mr. Shaw and Ms. Vitale against motion).

**MOTION** by Mr. Currier to deny the variance on behalf of the owner as advertised. Mr. Currier said that a majority of the Board believe that the shelter is possible, but with less encroachment, and that there are other opportunities to reduce the amount of encroachment. He said that the Board is sensitive that it is a dead end street, but it is still 16 feet into the 20 foot setback, and a majority of the Board feels that it is excessive, and could be minimized.

Mr. Currier said that the requested encroachment is not within the spirit and intent of the ordinance, and the Board is concerned that it does affect the property values of surrounding parcels.

Mr. Boucher asked if they could come back with something with less of an encroachment.

Mr. Currier said that something with less of an encroachment is something the Board could consider, as long as it is a substantially different application

Mr. Shaw said it would have to meet the Fisher v. Dover test, the Board would have to weigh on what we think is a substantially different request, but they are not precluded from coming back with a lesser encroachment.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED 3-2** (Mr. Boucher and Mrs. MacKay)

**5. Theresa Fredrickson (Owner) 10 Liberty Street (Sheet 122 Lot 374) requesting the following variances: 1) to encroach 5 feet into the 25 foot required front yard setback; 2) to encroach 5'-11" into the 10 foot required left side yard setback; and 3) to encroach 2'-8" into the 10 foot required right side yard**



**setback - all requests to remove existing house and construct a new house. RA Zone, Ward 6.**

Voting on this case:

Jack Currier  
JP Boucher  
Mariellen MacKay  
Rob Shaw  
Kathy Vitale

Theresa Fredrickson, 10 Liberty Street, Nashua, NH. Ms. Fredrickson said that they're tearing down the existing house re-building a new house. She said that the existing house is already encroaching into the setbacks and the intent is to keep the same footprint, although the foundation will be demolished, as its cracked and leaning. She said that she's submitted a letter from the Building Department, and it's not sufficient to have a second level.

Ms. Fredrickson said that the house is going to be a cape style, which is common on the street and the neighborhood.

Mr. Currier asked if they are planning on lifting the house and re-doing the foundation, or a complete re-do.

Ms. Fredrickson said it would be a complete re-do.

Mr. Currier said the house has these pre-existing encroachments, and they're going to essentially replace the house in the same situation, but with a little bit less encroachment on one side, but because it's a new house, by law, they are here tonight.

Mr. Falk said that the house is nonconforming, built prior to zoning laws, and the Code does allow if you're keeping the same foundation, that you can rebuild a house, even if it's encroaching into a setback, if it's unsafe. He said in this case, the owners are taking out the house and entire foundation, so it has to start from scratch, and the grandfathered issues go away when the entire foundation goes away. He said that the new foundation would have less of an impact on one side, so it will be less non-conforming.

**SPEAKING IN FAVOR:**

No one.

**SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:**

No one.

**MOTION** by Mr. Shaw to approve the variance application on behalf of the owner as advertised, with all requests considered collectively. Mr. Shaw said that the variance is needed to enable the applicant's use of the property, given the special conditions of the property, the Board found that the existing foundation is not in good shape, in disrepair, possibly an unsafe condition, and the reconstruction of the home will require removing the foundation and starting over, and as discussed previously, that precludes this from being treated as just a single grandfathering of the property that's already been an existing noncompliance. He said it is noteworthy that the encroachment will be reduced by two feet from the existing encroachment on the right side yard setback, so it will be slightly more conforming than the previous structure. He said that in this general neighborhood, there are many similarly placed homes with close placement, and probably do encroach into some of the setbacks if they were to be judged by the current law.

Mr. Shaw said that the proposed use would be within the spirit and intent of the ordinance.

Mr. Shaw said it will not adversely affect property values of surrounding parcels, and with the new construction, it will likely help with property values. He said that the request is not contrary to the public interest, and that substantial justice is served.

**SECONDED** by Mrs. MacKay.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**MISCELLANEOUS:**

**REHEARING REQUESTS:**

1. **MVSS Realty, LLC (Owner) Douglas Pauly (Applicant) 3 Bud Way (Sheet E Lot 1353) requesting use variance to allow vehicle repair and sales, and sale of vehicle parts. AI Zone, Ward 1.**

The requestor of the Rehearing is Richard Poyant. The above-mentioned case was approved by the Zoning Board on January 24, 2017.

Mr. Currier asked if there was any procedural error, which includes improper notice, denying someone the right to be heard, etc.

All Board members stated no.

Mr. Currier asked if it was an illegal decision, in other words, did the Board fail to completely address each of the points of law required for the use variance.

All Board members stated no.

Mr. Currier asked if the request for the rehearing contains any new information not presented or available to the Board at the original Public Hearing.

All Board members stated no.

Mr. Currier asked if there is anything which would/could cause the Board to make a different decision.

All Board members stated no.

**MOTION** by Mr. Currier to deny the rehearing request, the Board has considered the four items and the Board finds no reason to rehear the request.

**SECONDED** by Mr. Shaw.

**MOTION CARRIED UNANIMOUSLY 5-0.**

**REGIONAL IMPACT:**

The Board determined that there are no cases that involve regional impact.

**MINUTES:**

Mr. Falk sent the corrections on the January 24<sup>th</sup> meeting to Mr. Shaw.

Mr. Shaw said he hasn't had an opportunity to look at it yet.

Mr. Falk said that the Board can look at it at the next meeting.

**BY-LAWS:**

Mr. Falk said he'd forward a legislative draft for the Board to review.

**ADJOURNMENT:**

Mr. Currier called the meeting closed at 8:02 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing